Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. ("Nextel") hereby submits these reply comments in response to the Notice of Proposed Rulemaking ("NPRM")[1] and subsequent Public Notice[2] of the Federal Communications Commission ("Commission") requesting reply comments regarding the Federal-State Joint Board on Universal Service's ("Joint Board") February 27, 2004, Recommended Decision.[3] In the Recommended Decision, the Joint Board detailed possible changes to the Commission's policies regarding Eligible Telecommunications Carrier ("ETC") designations and its rules regarding High-Cost Fund support.

In initial comments, Nextel and a number of other parties agreed that action must be taken to control the growth of the Universal Service Fund ("USF") in order to preserve its long-term stability. Nextel again urges the Commission to pursue High-Cost Fund reform that both controls growth of the Fund and is competitively neutral, and reject

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1 *Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking,* CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004).

2 *Public Notice, Wireline Competition Bureau Extends Reply Comment Due Date in the Commission's Eligible Telecommunications Carrier and High-Cost Proceeding*, CC Docket No. 96-45, DA 04-2687 (rel. Aug. 26, 2004).

3 *Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) (hereinafter "Recommended Decision").

proposals – such as the Joint Board's "primary line restriction" and the Rural Telecommunications Associations' ("RTA") "tiered" wireless ETC support proposal – that would violate both the letter and spirit of Section 254 of the Communications Act, and do little or nothing to control High-Cost Fund growth. In addition, the Commission should also reject efforts to adopt "permissive" state ETC designation guidelines that contain "dominant carrier" type regulations, and instead allow the criteria delineated in the *Virginia Cellular* and *Highland Cellular Orders* to function as national guidelines.

I. THE COMMISSION MUST ADOPT SOLUTIONS, SUCH AS A STUDY AREA "CAP" UPON COMPETITIVE ENTRY, THAT CONTROL HIGH-COST FUND GROWTH WHILE PRESERVING COMPETITIVE NEUTRALITY

In its initial comments, Nextel stated that it strongly supported efforts by the Commission to reduce the growth of the USF and, in particular, growth of the High-Cost Fund.[4] If High-Cost Fund growth continues at current levels, it will only deepen the disproportionate financial burden on wireless consumers and dampen demand for new and innovative wireless services. Therefore, the Commission's focus in this proceeding must be on High-Cost Fund reform solutions that reduce growth of the High-Cost Fund, while maintaining competitive and technological neutrality among providers.

In the Recommended Decision, the Joint Board proposed a "study area cap" that would function in conjunction with the "primary line restriction" proposal.[5] In initial comments, Nextel stated that the specific study area cap proposal made by the Joint

4 *See* Comments of Nextel Communications, Inc. at 2-3 (hereinafter "Nextel Comments").

5 Recommended Decision at 44-45.

Board was not acceptable due to its coupling with the primary line restriction proposal.[6] Nextel and a number of other parties noted, however, that the Commission could easily adopt an independent "study area cap," and noted the substantial benefits of this proposal.

CTIA – The Wireless Association ("CTIA"), for instance, supported adoption of a slightly modified version of "the Rural Task Force's proposal to freeze per-line support available in a service area upon competitive ETC designation."[7] The concept of an independent study area cap was also endorsed by Dobson Cellular Systems, Inc. ("Dobson"),[8] Sprint Corporation ("Sprint),[9] Verizon[10] and Western Wireless Corporation ("Western Wireless"),[11] among others, as a competitively neutral and effective way of limiting High-Cost fund growth. This proposal has now been fully discussed before the

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6 *See id*. at 5-9.

7 Comments of CTIA – The Wireless Association at 22 (hereinafter "CTIA Comments").

8 Comments of Dobson Cellular Systems, Inc. at 28 ("First, only as an interim solution, Dobson supports Western Wireless' recommendation, which was rejected by the Joint Board, that would "cap total high-cost support in an area upon competitive ETC entry and allocate the support among ETCs based on market share.") (hereinafter "Dobson Comments").

9 Comments of Sprint Corporation at 8-9 (supporting the Joint Board's "recommendation to impose an annually adjusted cap upon the high-cost support received by rural ILECs when a competitive ETC is present" and also stating that "the Commission should seriously consider whether to 'cap total high-cost support in an area upon competitive ETC entry and allocate the support among ETCs based on market share, in lieu of limiting support to a single connection") (hereinafter "Sprint Comments).

10 Comments of Verizon at 18 ("The Commission should adopt a freeze of per-line support, but apply it to all rural study areas, not just those where there exist more than one ETC.").

11 Comments of Western Wireless Corporation at 18 ("At a minimum, as the Joint Board proposes, the Commission should adopt per-line caps on support upon competitive entry to avoid spiraling increases as competitors enter.") (hereinafter "Western Wireless Comments").

Commission both in the context of the *Rural Task Force Recommended Decision*[12] and in the current proceeding. Accordingly, the Commission should quickly move to adopt rules that freeze per-line support when a competitive ETC enters a study area.

In addition, Nextel again urges the Commission to consider additional measures to stabilize the High-Cost Fund. Along with Nextel, both CTIA and Sprint urged the Commission to immediately begin development of a system that transitions incumbent rural LECs to a forward-looking cost mechanism.[13] As both CTIA and Nextel stated, such a transition could begin by immediately moving incumbent LECs with more than 50,000 access lines in a study area to a forward-looking cost methodology, with a phased-in approach for rural LECs with less than 50,000 lines in a study area.[14] Furthermore, the Commission should also continue to explore efforts to implement the other measures discussed in Nextel's comments – including creation of statewide study areas[15] and reduction of "corporate operations expense" recovery[16] – as effective measures to reduce High-Cost Fund expenditures.

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[12] *See Federal-State Joint Board on Universal Service*, *Recommended Decision*, 16 FCC Rcd 6153, 6161 (2000).

[13] *See* CTIA Comments at 26; Nextel Comments at 14-15; Sprint Comments at 10-11.

[14] *See* Nextel Comments at 14-15; CTIA Comments at 26.

[15] *See* Nextel Comments at 15-16.

[16] *See id*. at 13-14.

II. THE JOINT BOARD'S PRIMARY LINE RESTRICTION PROPOSAL AND THE RURAL TELECOMMUNICATIONS ASSOCIATIONS' "TIER" PROPOSAL ARE NOT COMPETITIVELY NEUTRAL AND FAIL TO RESTRAIN HIGH-COST FUND GROWTH

A number of parties – and almost all of the Commercial Mobile Radio Service ("CMRS") providers participating in the proceeding– echoed Nextel's concerns regarding various legal infirmities associated with the Joint Board's "primary line restriction" proposal.[17] Dobson, for instance, notes that the Joint Board's "primary line" recommendation is "contrary to the statute, not competitively neutral and administratively unworkable."[18] Similarly, Sprint notes that the Joint Board's recommendation "focuses exclusively on measures designed primarily to reduce support to competitive ETCs."[19] In fact, as CTIA points out: "the Joint Board itself acknowledges that its proposals are meant to prevent or mitigate reductions in support available to rural carriers resulting from competitive entry,"[20] rather than maintaining any semblance of competitive neutrality or achieving any sort of meaningful reform.

Furthermore, the Joint Board proposals are unlikely to result in any meaningful reduction in overall High-Cost Fund demand or future growth. As CTIA notes, "incumbent LECs continue to receive approximately 93% of high-cost funding" and "from 2000 through 2003 incumbent LECs were responsible for over 90% of growth in

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17 *See, e.g.*, Comments of ALLTEL Corporation at 7-8; CTIA Comments at 14-22; Dobson Comments at 25-30; Comments of Nextel Partners, Inc. at 20-27; Sprint Comments at 6-20; Comments of United States Cellular Corporation at 43-48; Western Wireless Comments at 18-19.

18 Dobson Comments at iii.

19 Sprint Comments at 4.

20 CTIA Comments at 15.

the high-cost fund."[21] Accordingly, the Joint Board primary line proposal – which would keep rural LECs "whole" while substantially restricting support to CETCs – would have little to no impact of the overall growth of the High-Cost fund.[22]

In apparent recognition of the substantial problems associated with the Joint Board's primary line restriction proposal, at least three organizations (the "Rural Telecommunications Associations" or "RTA")[23] representing certain rural LECs voiced their opposition to the Joint Board's "primary line restriction" proposal in the initial round of comments, and instead proposed a system that would maintain current rural LEC support, while apportioning support to wireless ETCs based on subscribers.[24] Under the framework of the RTA proposal, the smallest wireless carriers would get 80 percent of the support received by the incumbent rural LEC serving the study area.[25] "Mid-tier" carriers would receive between 20 and 40 percent of the per-line support received by a

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21 *Id*. at 7.

22 The Universal Service Administrative Company ("USAC") also notes that implementation of the "primary line" proposal would require USAC to "collect substantially more data than it collects today," possibly including "customer-specific information for each line served by rural ILECs and the CETCs that serve in their study areas." *See* Comments of the Universal Service Administrative Company at 8-9. This would substantially increase the overall administrative burden associated with the High-Cost Fund.

23 The Comments of the "Rural Telecommunications Associations" were jointly submitted by the Organization for the Promotion and Advancement of Small Telecommunications Companies, the Rural Independent Competitive Alliance and the Rural Telecommunications Group, Inc. (collectively "RTA Comments").

24 *See* RTA Comments at Attachment A.

25 *See id.*

rural LEC serving the study area.[26] Carriers with a "national footprint," however, would receive no support whatsoever.[27]

While this proposal is structured differently than the Joint Board's primary line restriction, it suffers from the same legal and practical deficiencies, and must also be rejected. The RTA proposal contains no justification for the disparate treatment of wireless CETCs under the plan. In addition, it provides no analysis to justify how the Commission could possibly treat wireless carriers operating in the same area differently based solely on the size of their customer base. Furthermore, like the Joint Board's primary line restriction proposal, the RTA proposal will do little or nothing to slow the growth of the High-Cost fund. According to the RTA comments, their plan would reduce the current size of the High-Cost fund by – at most –"roughly 7.23 percent."[28] The RTA proposal would also do nothing to control future growth caused by rural LECs – which currently account for most of the real dollar growth of the High-Cost fund.

Both the Joint Board's primary line restriction proposal and the RTA proposal focus almost exclusively on measures to reduce support to wireless ETCs, while seeking to preserve or even expand High-Cost support provided to incumbent rural LECs. These approaches do not comport with Section 254, and will not achieve the fundamental reform required to stabilize the High-Cost Fund. Therefore, they must be rejected.

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[26] *See id.*

[27] *See id.*

[28] *See id*. at 14.

III. THE COMMISSION SHOULD REJECT EFFORTS TO INCLUDE "DOMINANT CARRIER" TYPE REQUIREMENTS IN ANY PERMISSIVE STATE ETC DESIGNATION GUIDELINES

In the Recommended Decision, the Joint Board also recommended that the Commission adopt "permissive guidelines for minimum ETC qualifications."[29] As Nextel, CTIA and a number of parties illustrated in initial comments, the guidelines delineated in the Recommended Decision have little or nothing to do with ensuring that wireless ETCs are able to provide service in High-Cost areas.[30] Instead, the "permissive guidelines" appear intended solely for the purpose of making "competitive ETCs as heavily regulated as incumbent carriers."[31] In the *Virginia Cellular* and *Highland Cellular Orders*, the Commission articulated a set of national guidelines to guide the Commission's ETC designation process.[32] As numerous parties in this proceeding recognized, the Commission should give these uniform, national guidelines a chance to function as guidance on both the state and federal level, rather than moving to a set of amorphous guidelines that would impose back-door state regulations on wireless carriers.

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29 Recommended Decision at 14.

30 *See, e.g.*, Nextel Comments at 16-19; CTIA Comments at 11-12; Sprint Comments at 20-23.

31 CTIA Comments at 12.

32 *See Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order*, 19 FCC Rcd 1563 (2004); *Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order*, 19 FCC Rcd 6442 (2004).

CONCLUSION

For the aforementioned reasons, the Commission should reject the proposals contained in the Joint Board's Recommended Decision, and instead adopt High-Cost Fund reforms that are competitively neutral, and which will effectively address High-Cost Fund growth.

Respectfully submitted,

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